
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-02-BF-135
Nextmedia Operating Inc.)	
Radio Station WJET (AM))	NAL/Acct.No. 200232280004
Erie, PA)	
)	FRN: 0006-1324-19
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 28, 2002

By the Resident Agent, Buffalo Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Nextmedia Operating Inc., (“Nextmedia”), licensee of AM broadcast station WJET, Erie, Pennsylvania apparently violated Sections 17.47(a)(1), 17.48(a) and 17.51(a)¹ of the Commission’s Rules (“Rules”) by failing to make an observation of the antenna structure’s lights at least once each 24 hours, failing to notify the Federal Aviation Administration (“FAA”) that the obstruction lighting was improperly functioning, and failing to exhibit lighting from sunset to sunrise. We conclude that Nextmedia. is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On May 30, 2002, the Federal Communications Commission’s (“FCC”) Enforcement Bureau’s Buffalo Office received information that the top beacon on the antenna tower for radio station WJET in Erie, Pennsylvania was not lit. On May 30, 2002 agent Viglione of the Buffalo Office attempted to contact station personnel. He left a voice mail message for the station manager, but received no return call that day. On May 31, 2002 the agent again telephoned the station and spoke with Rick Rambaldo, the station manager. The agent requested the tower lighting be inspected. Mr. Rambaldo was also instructed to notify the FAA if the inspection determined the top beacon was not functioning. Mr. Rambaldo later that day informed the agent that the inspection had been completed and that the top beacon was found to be not functioning. Mr. Rambaldo also informed him that the FAA had been notified.

3. On June 3, 2002, agent Viglione continued the investigation on-site, and spoke to Mr. Mark Himler, WJET’s chief engineer. Mr. Himler informed him that the automatic lighting indicator was not

¹ 47 C.F.R. §§ 17.47(a)(1), 17.48(a), and 17.51(a)

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functioning, and that the tower lights would be checked manually each day until the device was repaired. The agent also observed that the top beacon was in the process of being repaired.

4. On June 5, 2002, the Buffalo Office issued a Notice of Violation to Nextmedia citing these deficiencies. On June 18, 2002, Nextmedia submitted a written reply stating that an inspection of the tower lights conducted on May 31, 2002 revealed they were non-operating and the outage was immediately reported to the FAA. Further inspection by station personnel revealed the tower lighting monitoring device had been damaged. Nextmedia stated the tower lights and the tower lighting monitoring device had since been repaired.

III. DISCUSSION

5. Section 17.47(a)(1) of the Rules requires that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights. The tower lighting monitoring device used by radio station WJET was not properly maintained in that it indicated the lights were on when in fact the lights were not functioning.

6. Section 17.48(a) requires the owner of an antenna structure which has been assigned lighting specifications to report immediately to the nearest Flight Service Station of the FAA any extinguishment of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, that is not corrected within 30 minutes. From at least May 30, 2002 to May 31, 2002, Nextmedia had not reported the outage to the FAA.

7. Section 17.51(a) of the Rules requires all red obstruction lighting shall be exhibited from sunset to sunrise. Nextmedia failed to exhibit the red obstruction lighting on at least May 30, 2002.

8. Based on the evidence before us, we find that on May 30, 2002, Nextmedia willfully² violated Section 17.47(a)(1), 17.48(a) and 17.51(a) of the Rules by failing to make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register failure of such lights, failing to notify the nearest Flight Service Station of the FAA of the extinguishment of the top steady burning light that was not corrected within 30 minutes and failing to exhibit all red obstruction lighting from sunset to sunrise. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")³, sets the base forfeiture amount for failure to make an observation of the antenna structure's lights at least once each 24 hours at \$2000, failure to notify the nearest Flight Service Station of the FAA of the extinguishment of the top steady burning light that was not corrected within 30 minutes at \$3000, and failure to exhibit all red

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to commission or omission of any act, means that conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991)

³ 47 C.F.R. § 1.80.

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obstruction lighting from sunset to sunrise at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, (“Act”),⁴ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that Nextmedia does have an overall history of compliance, but the violation was egregious. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a fifteen thousand dollar (\$15,000) monetary forfeiture is warranted

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Nextmedia is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for violating Sections 17.47(a)(1), 17.48(a) and 17.51(a) of the Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Nextmedia SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232280004, and FRN 0006-1324-19.

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. 200232280004.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, and 0.311.

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Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Nextmedia Operating Inc., 6312 South Fiddlers Green Circle, Englewood, CO, 80111.

FEDERAL COMMUNICATIONS COMMISSION

David A. Viglione
Resident Agent
Buffalo Office

⁷ See 47 C.F.R. § 1.1914.